

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL,

Plaintiff,

v.

Civil Action No.

23-P-245
Ballard

GLENN A. NAYLOR II
Individually and d/b/a
NAYLOR MONUMENT COMPANY, LLC,
and d/b/a NAYLOR MONUMENT
MEMORIAL SALES, and d/b/a
NAYLOR MONUMENT COMPANY,

Defendant.

COMPLAINT AND PETITION FOR
PRELIMINARY AND PERMANENT INJUNCTION

This action is brought pursuant to the provisions of the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101, *et seq.* (hereinafter “the Act”). The State of West Virginia, by and through its duly elected Attorney General, Patrick Morrissey (hereinafter “the State”), the plaintiff in this matter, has reason to believe that the above-named Defendant, Glenn A. Naylor, II, individually and d/b/a Naylor Monument Memorial Sales and d/b/a Naylor Monument Company, LLC and d/b/a Naylor Monument Company (hereinafter referred to collectively as “Naylor”), has violated the Act. The State brings this action to enjoin and restrain the Defendant from engaging in unfair or deceptive acts or practices in connection with the sale of memorials and monuments and related activities.

I.
PARTIES

1. The Plaintiff, the State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia.

2. The Attorney General is authorized to bring this action pursuant to W. Va. Code §§ 46A-7-108, -110 and -111.

3. Defendant, Glenn A. Naylor, II, is a resident of Kanawha County, West Virginia, residing at 116 Slacks Branch, Clendenin, West Virginia 25045.

4. Naylor conducts business in the State of West Virginia engraving, installing and selling memorials and monuments to individuals primarily for placement in cemeteries. Naylor uses various names for his business operations including Naylor Monument Company, Naylor Monument Company LLC, and Naylor Monument Memorial Sales.

5. Naylor Monument Company LLC was organized as a limited liability company under the laws of West Virginia in 2015. The West Virginia Secretary of State revoked Naylor Monument Company LLC's license for failure to file an annual report in 2016.

6. Since at least August 2013, Defendant has sold monuments and memorials to individuals for personal and family use.

II.
JURISDICTION AND VENUE

7. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

8. Venue is proper in this Court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a)(6).

III.
FACTS COMMON TO ALL CAUSES OF ACTION

9. Defendant operates a business, variously known as Naylor Monument Company, Naylor Monument Memorial Sales, Naylor Monument Company LLC, which sells gravestones, headstones, and other monuments to individuals (“consumers”).

10. West Virginia consumers and others contact Defendant for the sale and installation of cemetery monuments.

11. Defendant also engraves monuments and installs monuments in cemeteries for consumers.

12. In 2022, the State commenced an investigation of Defendant’s business practices after receiving a number of complaints from consumers that Defendant had taken their money and had not constructed, engraved, delivered or installed the promised cemetery monuments.

13. Defendant enters into contracts with West Virginia consumers and others to provide cemetery monuments, including the ordering, engraving and installation of the monuments.

14. West Virginia consumers and others who enter into contracts with Defendant are required to make an initial down payment or sometimes the entire contract amount.

15. Defendant frequently fails to meet agreed upon deadlines to complete contracted cemetery monument work.

16. Defendant frequently fails or refuses to answer consumers’ telephone calls or return customers’ messages regarding delays.

17. Consumers frequently cannot contact Defendant to discuss completing the promised work or refunding their deposits.

18. In some cases, Defendant orders and engraves the monument and then fails to install the monument on the gravesite.

19. Sometimes, Defendant takes a deposit of money and then fails to do the cemetery monument work altogether.

20. Defendant willfully and repeatedly engaged in the conduct described in this complaint.

21. By way of example, the following allegations involving three consumers are representative of Defendant's conduct.

Amy Ullman

22. Amy Ullman is a resident of Cross Lanes, West Virginia.

23. In October 2021, Ullman placed an order with Defendant to engrave the date of her mother's death on her headstone.

24. Ullman paid Defendant in full for the engraving services in the amount of \$185.50.

25. Ullman attempted to contact Defendant numerous times by telephone and text messages. Defendant usually did not respond to Ullman.

26. As of June 2, 2023, Defendant has not refunded Ullman's money nor has he engraved the headstone.

Cheryl Rhodes

27. Cheryl Rhodes is a resident of Charleston, Kanawha County, West Virginia.

28. Rhodes bought a headstone monument for her deceased husband on February 27, 2022.

29. The Defendant received full payment for Rhodes's headstone from Cheryl Rhodes's son and his wife in the amount of \$5,508.85.

30. Rhodes was told by Defendant it would take about 2 months for the headstone to be delivered.

31. After Rhodes purchased the monument, Defendant did not deliver the headstone ordered for more than a year.

32. Rhodes and her children called Defendant several times after the monument had not been delivered.

33. On several occasions, Rhodes's son went to see Defendant in person to learn why the headstone had not yet been delivered to the cemetery. However, the Defendant did not deliver the headstone.

34. Over the next several months, Rhodes or her children attempted to contact Defendant by telephone to ask for a refund. Defendant stopped answering their calls or returning their messages.

35. At the end of March 2023, Defendant delivered a headstone to Rhodes's cemetery. However, upon information and belief, the headstone delivered was not the headstone ordered by Rhodes, has an incomplete engraving and other engraving details that are not as promised.

36. To date, Defendant has failed to refund Rhodes's money.

Lazenda Smith

37. In April 2019, Fred Buckley of Mount Hope, West Virginia, purchased a cemetery monument from Montgomery Memorial Park in the amount of \$4,415.96 for his deceased wife.

38. Mr. Buckley subsequently died in December 2021.
39. Lazenda Smith, of Letart, West Virginia, Mr. Buckley's daughter, contracted with Defendant in early 2022 to engrave her father's death date on the headstone.
40. Smith was charged \$499.00 for the engraving.
41. After many months of contacting the cemetery and Defendant, Defendant finally engraved Mr. Buckley's death date on the headstone in August 2022.
42. Defendant used a font to engrave Mr. Buckley's death date, but it does not match the font on the rest of the headstone.
43. The headstone engraving cannot be fixed without damaging the integrity of the headstone.
44. To date, Defendant has refused to refund Ms. Smith's money or pay for the replacement of the headstone that he damaged beyond repair.

FIRST CAUSE OF ACTION
(Creating a likelihood of confusion or misunderstanding among consumers
by failing to perform the contract)

45. The State repeats and reasserts the facts and allegations set forth in paragraphs numbered 1 through 44 above as if each were set forth herein in its entirety.
46. Defendant enters into contracts with consumers to obtain, make, personally engrave, and set cemetery monuments in place at gravesites in cemeteries.
47. Defendant demands and receives full or partial payment for the purchase and placement of cemetery monuments.
48. Defendant demands and receives full payment for the engraving of monuments.
49. Defendant fails to provide, or substantially provide, goods and services promised in contracts with West Virginia consumers.

50. Defendant fails to return or refund deposits for undelivered goods and work not done.

51. Defendant causes much confusion among consumers who have paid money and expect to see their cemetery monuments on their loved ones' gravesites.

52. The West Virginia Consumer Protection Act makes unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." W. Va. Code § 46A-6-104.

53. Conduct which creates likelihood of confusion or of misunderstanding among consumers is an unfair or deceptive act or practice. W. Va. Code § 46A-6-102(7)(L).

54. Defendant fails to deliver cemetery monuments to consumers, even if they have paid for them in full, or part, in violation of the Act. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L).

55. Defendant fails to engrave cemetery monuments, even after consumers have paid for the services in full, or part, in violation of the Act. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L).

SECOND CAUSE OF ACTION

(Engaging in an act of deception, fraud, false pretense, false promise or misrepresentation in the sale or advertisement of any services)

56. The State repeats and reasserts the facts and allegations set forth in paragraphs numbered 1 through 55 above as if each were set forth herein in its entirety.

57. Defendant frequently promises to complete, deliver, or install cemetery monuments within a few weeks after a sale.

58. Defendant frequently fails to complete, deliver, or install cemetery monuments for months beyond promised delivery dates.

59. Defendant frequently fails to complete, deliver, or install cemetery monuments altogether, even after consumers have paid for the goods or services in full.

60. Defendant sometimes delivers monuments that are not what consumers ordered and paid for.

61. Defendant sometimes incorrectly engraves monuments and refuses to fix or replace the monuments.

62. The West Virginia Consumer Protection Act makes unlawful “unfair or deceptive acts or practices in the conduct of any trade or commerce.” W. Va. Code § 46A-6-104.

63. Engaging in an act of deception, fraud, false pretense, false promise, or misrepresentation in connection with the sale or advertisement of any services is an unfair and deceptive act or practice. W. Va. Code § 46A-6-102(7)(M).

64. Promising to complete, deliver, or install cemetery monuments, frequently failing to meet promised deadlines, and failing to engrave consumers’ monuments for long periods of time are acts of deception and false promises in violation of the Act. W. Va. Code § 46A-6-104, as defined by W.Va. Code § 46A-6-102(7)(M).

65. Naylor sells goods or services with the intent not to sell them as advertised in violation of the Act. W.Va. Code § 46A-6-104 as defined by W.Va. Code § 46A-6-102(7)(I).

66. Delivering incorrect monuments and incorrectly engraving monuments and then refusing to fix or replace the monuments is an unfair or deceptive act or practice causing confusion among consumers by misrepresenting that goods purchased can be delivered as ordered in violation of the Act. W.Va. Code § 46A-6-104 as defined by W.Va. Code § 46A-6-102(7)(L) and (M).

PRAYER FOR RELIEF

WHEREFORE, The State of West Virginia requests that this Court:

A. Conduct a hearing on this matter as soon as possible pursuant to W. Va. Code § 46A-7-110.

B. Grant an immediate preliminary injunction without bond pursuant to W. Va. Code § 46A-7-110 by:

1. Enjoining Defendant from engaging in the sale of any cemetery monument or service of any kind in the State of West Virginia;

2. Enjoining Defendant from transferring or conveying any real or personal property in his custody or control to any third party until this matter has been finally adjudicated; and

3. Entering an Order compelling Defendant to provide the Attorney General, within 14 calendar days of entry of the Order, with sufficient documents identifying all of his customers since January 1, 2019, relating to the sale, engraving and/or installation of cemetery monuments, providing the customers' names, addresses, telephone numbers, dates of purchase, and the amounts paid.

C. Upon final hearing:

1. Enter judgment in favor of the State and against Defendant and order Defendant to pay restitution to all aggrieved consumers;

2. Enter an Order permanently enjoining Defendant from advertising, selling, engraving or installing cemetery monuments in the State of West Virginia;

3. Enter an Order permanently enjoining Defendant from violating the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.*,

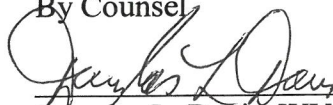
generally, and specifically from engaging in unfair or deceptive acts or practices in the conduct of trade or commerce as defined by W. Va. Code § 46A-6-104 and W. Va. Code § 46A-6-102(7)(L) and (M);

4. Enter judgment in favor of the State against Defendant and order Defendant to pay a civil penalty in the amount of five thousand dollars (\$5,000.00) for each and every willful and repeated violation of Chapter 46A of the West Virginia Code that he committed, as provided in W. Va. Code § 46A-7-111(2)
5. Enter judgment against and order Defendant to pay to the State of West Virginia all its attorney fees, court costs, investigation costs, and all other costs associated with the maintenance and prosecution of this action; and
6. Grant such other and further relief as the Court deems just.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL

By Counsel



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